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9 UNITED STATES DISTRICT COURT  
10 CENTRAL DISTRICT OF CALIFORNIA- WESTERN DIVISION  
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15 JACQUELINE BRIGHT, ) CV 06-6596 SH  
16 Plaintiff, )  
17 v. ) MEMORANDUM DECISION  
18 MICHAEL J. ASTRUE, ) AND ORDER  
19 Commissioner of the )  
20 Social Security Administration, )  
21 Defendant. )

22 This matter is before the Court for review of the decision by the Commissioner  
23 of the Social Security Administration (“Commissioner”) denying Plaintiff’s  
24 application for benefits under Title II of the Social Security Act. The action arises  
25 under 42 U.S.C. § 405(g), which authorizes the Court to enter Judgment upon the  
26 pleadings and transcript of the record before the Commissioner. The Plaintiff and  
27 Defendant have filed their pleadings, the Defendant has filed the certified transcript  
28 of the Administrative Record (“AR”), and the parties have filed a Joint Stipulation.  
After reviewing the matter, the Court concludes that the decision of the Commissioner

1 should be reversed and the matter remanded for further proceedings consistent with  
2 this decision.

### 3 4 I. PROCEEDINGS

5 Plaintiff filed for disability benefits under Title II of the Social Security Act on  
6 November 17, 2003. AR 36-38. Her application was denied both initially, AR 30-34,  
7 and, after a subsequent hearing, by an Administrative Law Judge (“ALJ”) on March  
8 20, 2006. AR 16-19. Plaintiff’s request for review of the ALJ’s decision was also  
9 denied by the Appeals Council on August 25, 2006. AR 3-5. Plaintiff then filed the  
10 present Complaint.

11 Plaintiff makes two challenges to the ALJ’s decision. Plaintiff alleges that (1)  
12 the ALJ failed to properly evaluate her obesity, and (2) the ALJ failed to provide clear  
13 and convincing reasons to reject her subjective symptom testimony. Because the  
14 Court finds that Plaintiff prevails on issue one, it need not address the second issue  
15 raised by the Plaintiff.

### 16 17 II. DISCUSSION

18 Between September 29, 2003, and January 3, 2005, Plaintiff visited the Martin  
19 Luther King Jr./Drew Medical Center (“King/Drew”) multiple times complaining of  
20 bilateral knee pain. AR 76-82, 99-149. On one occasion, Plaintiff also complained  
21 of chest pains. AR 119. Plaintiff was diagnosed with osteoarthritis in her left knee  
22 following an examination and x-rays conducted by the medical personnel at  
23 King/Drew during her first visit on September 29, 2003. AR 77-82.  
24 Plaintiff was also diagnosed with hypertension several months later, on February 19,  
25 2004. AR 147-149.

26 Additionally, Plaintiff was diagnosed with obesity on that same date. AR 149.  
27 Results of laboratory results conducted in conjunction with the February 2004  
28 examination indicated high levels of HDL and LDL cholesterol in Plaintiff’s blood.

1 AR 146.<sup>1</sup>

2 Nevertheless, the ALJ concluded in his decision that Plaintiff only suffered  
3 from controlled hypertension and arthritis in her knees, arguing that “claimant’s  
4 doctors have never indicated that she had any functional limitations, which were  
5 expected to last for a period of twelve continuous months.” AR 17.

6 The ALJ adopted the opinion of a consultative examiner (“CE”), who  
7 examined Plaintiff on February 24, 2004. AR 69-74. The CE found that Plaintiff,  
8 while having bilateral chondromalacia with arthritis and a spurring of the  
9 patellofemoral articulations, had a normal gait and could still perform heavy work.  
10 AR 73. The CE, though noting Plaintiff’s weight and height, did not address any  
11 potential obesity issues. AR 70.

12 In 1999, obesity was removed from the list of impairments in 20 C.F.R. Part  
13 404, Subpart P, Appendix 1. SSR 02-01p. However, obesity must still be addressed  
14 in evaluating a plaintiff’s impairments in the five-step sequential analysis of disability  
15 to be followed in Title II and Title XVI cases. SSR 02-01p.

16 The five step analysis is delineated at 20 C.F.R. § 404.1520:

17 At the first of the five steps, it is determined whether a person is engaged in  
18 “substantial gainful activity.” If so, disability benefits are denied.

19 At the second step, it is determined whether the person has a medically severe  
20 impairment or a combination of impairments. If not, benefits are denied.

21 At the third step, it is determined whether the person’s severe impairment or

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23 <sup>1</sup>Throughout the period of Plaintiff’s treatment, Plaintiff’s weight was recorded as varying  
24 between 190 and 203 pounds. Plaintiff’s height was recorded only once at 5 foot 1 inch; in the Joint  
25 Stipulation, Plaintiff argues that she is 62 inches, or 5 foot 2 inches, tall. Joint Stipulation at 5.  
26 Regardless of Plaintiff’s height, when either measurement is considered with either of the two  
27 extremes of her weight, a calculation of her Body Mass Index (BMI) puts her in the obese category  
28 according to the National Institute of Health (NIH) standards, which are adopted by the Social  
Security Administration. Social Security Ruling (“SSR”) 02-01p; see Centers for Disease Control  
and Prevention online BMI calculator at <http://www.cdc.gov/nccdphp/dnpa/bmi/index.htm> and  
the BMI tables on the NIH website at [http://www.nhlbi.nih.gov/guidelines/obesity/bmi\\_tbl.htm](http://www.nhlbi.nih.gov/guidelines/obesity/bmi_tbl.htm) and  
[http://www.nhlbi.nih.gov/guidelines/obesity/bmi\\_tbl2.htm](http://www.nhlbi.nih.gov/guidelines/obesity/bmi_tbl2.htm).

1 combination of impairments meets or equals a number of impairments listed in 20  
2 C.F.R. Part 404, Subpart P, Appendix 1, (“listed impairments”). If so, then the person  
3 is presumed disabled, and benefits are awarded.

4 If a person’s severe impairment or combination of impairments does not meet  
5 or equal the criteria of a listed impairment, then at step four, a residual functional  
6 capacity (“RFC”) determination is made, and it is determined whether, based on the  
7 RFC, the impairments prevent the person from performing past relevant work. If the  
8 person is able to do so, benefits are denied.

9 Finally, at the fifth step, if a person cannot perform past relevant work, it is  
10 determined whether the person can, based on the RFC, perform other kinds of work  
11 available in the national economy. If so, benefits are denied.

12 At all steps of the analysis except for step five, it is the claimant’s burden to  
13 show the necessary proof. Swenson v. Sullivan, 876 F.2d 683, 687 (9th Cir. 1989).  
14 At step five, the burden shifts to the Commissioner to show that there is other work  
15 which the claimant can perform based on the claimant’s RFC level. See id.

16 According to the Social Security Administration’s regulations, obesity is to be  
17 considered along every step of the five-step analysis, even when there is no explicit  
18 diagnosis of obesity in a plaintiff’s record. SSR 02-01p. Obesity is particularly  
19 significant in step two of the analysis, the severity determination, and in step three, the  
20 listed or equivalent impairment determination. See SSR 02-01p. There is no  
21 particular level of obesity which qualifies a person as severely impaired in step two;  
22 rather cases will be evaluated individually and will be based on the particular facts of  
23 a case. SSR 02-01p. In step three, an equivalency will be found if there is an  
24 impairment which, in combination with obesity, meets the requirements of a listing.  
25 SSR 02-01p.

26 Because obesity can cause additional limitations of some functions depending  
27 on where the excess weight is carried, obesity should be considered in conjunction  
28 with other impairments. SSR 02-01p; see also 20 C.F.R. §423(d)(2)(B) (stating that

1 the Social Security Administration [“SSA”] “will consider all impairments, even those  
2 that are not severe”). A person’s tolerance to sitting, walking, pushing, heat, and  
3 humidity can all be more limited as result of the combined effect of obesity and other  
4 impairments than if the person does not suffer from obesity. SSR 02-01p.

5 The Ninth Circuit has further clarified the regulations related to obesity, stating  
6 that because determinations of non-severity may prejudice a plaintiff in later steps,  
7 such as step three, the ALJ must not make assumption about the severity of obesity  
8 as combined with other impairments, but that he/she must decide each case based on  
9 the information in the record. See Burch v. Barnhart, 400 F.3d 676, 682 (9th Cir.  
10 2005); see also SSR 02-01p.<sup>2</sup> However, obesity should be considered as a factor in  
11 step three only when the plaintiff “presents evidence [that obesity acts in combination  
12 with other impairments] in an effort to establish equivalence [to a listed impairment].”  
13 Burch, 400 F.3d at 683.

14 If there is no evidence in the record that plaintiff’s obesity exacerbates her other  
15 impairments, id. at 682, and plaintiff does not point to any such evidence even on  
16 appeal, the ALJ does not make a reversible legal error by not crediting plaintiff’s  
17 obesity as a limiting factor, as long as the ALJ addresses plaintiff’s obesity in making  
18 the RFC determination. Id. at 683-684.<sup>3</sup>

19 In the present case, Plaintiff did not raise directly obesity as an impairment  
20 during the hearing before the ALJ, nor did the ALJ make any findings or  
21 considerations of Plaintiff’s obesity in his RFC determination. The record is equally

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22 <sup>2</sup>In Burch, the ALJ did not consider plaintiff’s obesity at step two, but because the step was  
23 resolved in plaintiff’s favor, the Court found that to not be a reversible error. Burch, 400 F.3d at  
24 682.

25 <sup>3</sup>The Court in Burch noted that the ALJ addressed the plaintiff’s obesity at step three, finding  
26 that it may exacerbate some of her other impairments slightly, and made his RFC determination  
27 based on all the evidence. Burch, 400 F.3d at 684. Because plaintiff in Burch had not pointed to  
28 any additional limitations based on her obesity that were not addressed by the ALJ, the Court found that  
the ALJ provided sufficient legal reasons for his determination. Id.

1 unclear as to whether Plaintiff's obesity exacerbates her other impairments. Plaintiff  
2 does not point to any statements that say as much.

3       However, the SSA requires that obesity is considered with other impairments  
4 even if it is ultimately not seen as severe by itself. SSR 02-01p. The SSA further  
5 cautions that special care should be paid when evaluating with impairments on  
6 weight-bearing joints, such as arthritis in the knees, and obesity. See SSR 02-01p  
7 (stating that "[t]he combined effects of obesity with other impairments may be greater  
8 than might be expected without obesity. ... [S]omeone with obesity and arthritis  
9 affecting a weight-bearing joint may have more pain and limitation than might be  
10 expected from the arthritis alone").

11       Further, and contrary to the plaintiff in Burch, Plaintiff here does raise the issue  
12 of obesity on appeal. In the Complaint, Plaintiff alleges that her morbid obesity does  
13 cause limitations of her physical functional capacity. Joint Stipulation at 6. She  
14 argues that given her severe bilateral knee problems, her excess weight precludes her  
15 from standing and walking six hours a day on a regular basis, which was determined  
16 as part of her RFC by the ALJ. Joint Stipulation at 6, 8. Plaintiff's testimony at the  
17 hearing before the ALJ is replete with Plaintiff's assertions that she is unable to stand,  
18 walk, or even sit for a long time. AR 158-159, 165-166.

19       However, it is unclear whether Plaintiff's obesity, in conjunction with her other  
20 impairments, is severe enough to limit Plaintiff's abilities in step three of the analysis.

21       The Court has the authority to affirm, modify, or reverse the Commissioner's  
22 decision "with or without remanding the cause for rehearing." 42 U.S.C. § 405(g).  
23 Remand is appropriate when the record is not fully developed, and remand would  
24 remedy defects in the Commissioner's decision. See Lewin v. Schweiker, 654 F.2d  
25 631, 635 (9th Cir. 1981). Based on the unresolved issues relating to Plaintiff's  
26 obesity, the Court cannot conclusively determine whether Plaintiff's combined  
27 impairments meet criteria equivalent to a listed impairment. The Court, therefore,  
28 remands this matter to the Commissioner to consider whether Plaintiff's obesity

1 further limits her physical capacity.

2 III. ORDER

3 For the foregoing reasons, the decision of the Commissioner is reversed, and  
4 the matter is remanded pursuant to Sentence 4 of 42 U.S.C. § 405(g) for further  
5 proceedings in accordance with this opinion.

6 DATED: September 17, 2007  
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9 /s/

10 STEPHEN J. HILLMAN  
11 UNITED STATES MAGISTRATE JUDGE  
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